UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/94
24 January 1996

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 17 of the provisional agenda

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Situation of Human Rights in Haiti

Report by Mr. Adama Dieng, independent expert, prepared in accordance with Commission resolution 1995/70

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INTRODUCTION

1. This report, submitted to the Commission of Human Rights at its fifty-second session, contains an overview of the human rights situation in Haiti, and the expert's recommendations subsequent to his mission to Haiti from 23 September to 6 October 1995 and discussions he was able to hold in neighbouring countries.

2. The expert wishes to thank all those in Montreal, Port-au-Prince and New York who assisted him in accomplishing his mission. He is grateful to the Special Representative of the Secretary-General for Haiti, Mr. Lakhdar Brahimi, the Resident Representative of the United Nations Development Programme (UNDP) in Haiti and his entire staff, as well as the Executive Director of the International Civilian Mission in Haiti (MICIVIH), the Chief of the civilian police forces of the United Nations Mission in Haiti (UNMIH) and the interim director of the Division of Human Rights of MICIVIH. He also wishes to acknowledge the close cooperation he enjoyed with the Haitian authorities and organizations, officials of Human Rights Watch and the National Coalition for Haitian Refugees (NCHR), and representatives of specialized agencies in Port-au-Prince, as well as members of the National Commission of Truth and Justice (CNVJ).

3. At its fifty-first session, by its resolution 1995/70 the Commission on Human Rights, after considering the report of the Special Rapporteur, Mr. Marco Tulio Bruni Celli (E/CN.4/1995/59), requested the Secretary-General to appoint an independent expert to have responsibility for providing assistance to the Haitian Government in the area of human rights, to examine the development of the situation in Haiti in that area, and to monitor the fulfilment by Haiti of its obligations in that field. The Commission requested the expert to submit a report to the General Assembly at its fiftieth session and to the Commission on Human Rights at its fifty-second session.

4. The Economic and Social Council having endorsed the request by the Commission (decision 1995/281), the Secretary-General, on 31 July 1995, appointed Mr. Adama Dieng as the independent expert to study the situation of human rights in Haiti.

5. On 1 November 1995, the independent expert communicated his report (A/50/714) to the Secretary-General. The report did not deal with economic, social and cultural rights. The present report does reproduce a large part of the report submitted to the General Assembly at its fiftieth session, but it has been updated in the light of recent events, more particularly the results of the presidential elections on 17 December 1995, and has been supplemented by a section on economic, social and cultural rights (paras. 73-78).

II. THE CURRENT SITUATION OF HUMAN RIGHTS

A. Introduction

6. The return of President Jean-Bertrand Aristide in October 1994 resulted not only in a considerable improvement in the human rights situation in Haiti, but also marked the beginning of a major programme of institutional reform.

The violations committed for three years under the de facto military regime plunged the country into horror, and their effects can still be felt today. The efforts President Aristide and his Government have made over the past year to remedy the abuses committed by the military junta are to be commended. Nevertheless, some grey areas persist and certain weaknesses, particularly those of the judicial system and the police, tend to tarnish the achievements in the area of protection of human rights.

7. Violations of human rights have diminished greatly since the overthrow of the military regime and have given way to other forms of violence, such as common crime, which has increased sharply. In order to show its good faith and its desire to conform to international human rights instruments, after an interruption during the period of the coup d'état and the de facto government, the Haitian Government prepared a brief report on human rights in Haiti (CCPR/C/105) and submitted it to the Human Rights Committee on 27 February 1995. The Committee welcomed its cooperation with the State Party and invited it to present its initial report under the International Covenant on Civil and Political Rights, due 5 May 1992, by 1 April 1996 at the latest. 1/

B. The toll of three years of military dictatorship

8. During the period of the military dictatorship, thousands of people lost their lives; the army is responsible, either directly or indirectly, for these deaths. For three years, summary and extrajudicial executions, enforced disappearances, arbitrary arrest, rape, torture, and cruel, inhuman and degrading treatment inflicted by agents of the State, threats, extortion, and destruction or confiscation of property were a part of daily life for the people. This reign of terror caused about 100,000 Haitians to flee and find refuge abroad, particularly at the American base at Guantanamo, Cuba, and in the Dominican Republic. About 300,000 persons fled Port-au-Prince in order to save their lives and went to the interior of the country. On his return, President Aristide found a country wounded, mistrustful and scarred by the violations committed. Therefore, the process of rebuilding democracy will take time.

C. The right to life

9. Human rights violations have greatly decreased. Today, the wave of refugees fleeing the country has slowed considerably: between October 1994 and October 1995, only 1,000 Haitians sought refuge abroad. Violations continued to occur in the months following the fall of the military regime. In September and October 1994, soldiers fired on people demonstrating in support of the return of President Aristide.

10. Certain members of the Interim Public Security Force, made up of former soldiers and Haitian refugees recruited in the camps on the American base at Guantanamo, have been implicated in incidents of abuse where they allegedly questioned suspects and then killed them. On 28 June 1995, an officer of the Security Force simply killed a man who was running away after having been caught stealing used clothing. Much testimony confirms that, too often, certain officers of the Force are "trigger happy" and fire at people with no evidence to support the claim of self-defence. The measures taken thus far

against some officers have been disciplinary and are rarely made public. In most cases they result in suspension. These officers have never been brought to trial. Moreover, the new Haitian National Police Force was implicated in similar incidents where officers fired at fleeing suspects. The Haitian Government is investigating the incidents and, on 18 September 1995 suspended two of the members of the Police Force. In addition, the tensions between the two Forces are not helpful in the present context. It should be noted that the Interim Force was disbanded by an order of 6 December 1995 issued by President Aristide. This means that the fledgling National Police Force alone is responsible for maintaining law and order.

11. In September 1995, UNMIH reported a number of offences, in particular, hold-ups of cars, robbery, various incidents of aggression, gunshot wounds, and cases of summary justice committed by the people. In general, the murder victims are former members of the Haitian army suspected of having committed crimes.

12. Since February 1995, 20 people have been killed by heavy weapons, without robbery as the apparent motive. MICIVIH describes these murders as "commando-style executions". It was alleged that supporters of President Aristide were implicated in those murders. However, no evidence has been produced in support of these allegations, which were based on the fact that some of the victims had opposed the President.

13. Furthermore, cases of summary justice have increased considerably recently because the people lack confidence in the judicial system in Haiti. Thus, in March 1995, 45 people were stoned and beaten to death by crowds because they were suspected of committing crimes. In July, 18 people were killed under the same principle of personal "vigilante" justice. These spontaneous actions express the reaction of the people to inept judicial procedures, and the Government has condemned them. The judicial system was considerably weakened, from the standpoint of both human and material resources, during the three years of military dictatorship, and at present, Haitians prefer to settle scores themselves rather than having recourse to their country's judicial authorities. In August, only eight cases of summary justice were reported; this decrease is partly due to the support provided by the international community, the patrols conducted by UNMIH and the Interim Public Security Force, more numerous police actions against persons suspected of committing crimes, and the deployment of the new Haitian National Police.

14. The brigades de vigilance, which were established by the people to supplement the police in controlling and curbing crime in certain neighbourhoods, are themselves alleged to have been involved in cases of summary justice. Yet their role is definitely not to replace the judicial authorities. Some thought should be given to providing training and education for such brigades.

15. The renewed violence in Haiti in November 1995 reflects the country's current instability. The ambiguous attitude adopted by President Aristide towards leaving office, scheduled for February 1996, has helped to make the situation even shakier. The President, encouraged by the support of his followers, at one time considered extending his mandate by three years in order to compensate for his years in exile. Yet this decision went against

the promises made to the international community and the provisions of the Constitution which expressly forbid the outgoing President from standing straightaway for a second term. Finally, President Aristide has confirmed his intention of standing down in February 1996, in keeping with the provisions of the Constitution. Again, clashes took place in Port-au-Prince on 23 November between the forces of law and order and people living in the shanty town of Cité Soleil; four people were killed, including a little girl. On the night of 11-12 December, a group of armed civilians fired at the home of Mr. Léon Jeune, one of the candidates in the presidential elections. There were no victims.

16. These acts of violence are to be condemned and they are detrimental to the whole of the population, for international donors have displayed concern and are more reluctant to grant aid when violence is undermining the reforms and the process of restoring the rule of law in Haiti.

D. Cruel, inhuman and degrading treatment

17. Nowadays, cruel, inhuman and degrading treatment has become the exception, while during the military dictatorship it was the rule. The dismantling of the Haitian armed forces, which were primarily responsible for the large-scale human rights violations, has led to a considerable decrease in human rights violations and violence in Haiti. Some cases of mistreatment of prisoners or excessive use of force by the new Haitian National Police Force or the Interim Public Security Force were reported.

E. Freedom of expression, association and assembly

18. The right to freedom of expression, association and assembly is exercised without hindrance by all sectors of Haitian society, including the political opponents of President Aristide and his Government.

19. The Haitian Constitution provides that "journalists shall exercise their profession freely within the framework of the law". The next step will be the promulgation of an act on freedom of the press, which should provide a legal framework for regulating the profession and making it accountable. After being gagged for three years, journalists and the media are once again enjoying full press freedom and no longer practise self-censorship. Political parties are free to voice their opinions and opposition parties can criticize the present Government's policy without risk. Even the supporters of the former dictator, Jean-Claude Duvalier, can express themselves freely.

20. The right to freedom of expression enjoyed by individuals and the media is sometimes curbed in certain situations. For example, in April 1995, legal proceedings were instituted against a former judge for comments he made against President Aristide and the leader of the Papaye peasant movement.

21. Journalists are concerned about the attitude of the State media, which give priority to the Government's views in their reporting. In July 1995, the Minister of Information and Coordination seized 1,500 copies of the government newspaper, L'Union, in which the editor-in-chief had written a front-page editorial criticizing the Government for its lack of support to the newspaper.

22. MICIVIH also expressed concern at the closure of Radiotélévision de la Métropole du Sud on 10 June 1995, during the election campaign. The owner of the station appeared before a justice of the peace to answer to charges of "slander, defamation, violation of the press laws and contempt of court". Furthermore, finding that there had been administrative irregularities in the registration of the station, the justice of the peace ordered its closure. Since then, the station has resumed its operations after meeting the administrative requirements.

23. Political organizations and groups have reorganized themselves. Even the former Haitian soldiers have formed an association in order better to defend their interests.

24. Several peaceful demonstrations were organized in September 1995 without any serious incidents. The demonstrators wanted to commemorate a particular event, namely the fall of the military regime, remember the victims of the military coup d'état of 1990 and of the subsequent military dictatorship, and the assassinations of 30 September 1991, observe ongoing trials or put forward various demands such as the payment of salaries and requests for food and material assistance. Demonstrations have also been held against President Aristide and the Government on the issue of the privatization of public enterprises.

F. Arbitrary or illegal arrest and/or detention

25. Although cases of arbitrary arrest and detention have decreased considerably as a result of the efforts made by the judicial authorities and the police to abide by the procedural time-limits prescribed by the law, some practices are still not in conformity with the principles of law. We have identified the case of a prisoner who is being held in the Saint-Marc prison without a warrant.

26. Sometimes the arrest warrants issued are questionable as to substance and form. Arrests are not always ordered by the competent judge, and arrest warrants do not always state the offences, the date and place of commission, or the legal bases for the arrests. Often, apart from cases of in flagrante delicto, people are arrested and detained following a public denunciation without any further evidence and without any preliminary investigation being carried out. Sometimes, several people are detained on the basis of a collective arrest warrant, which in legal terms, is quite inconceivable.

27. Pre-trial detention is being used improperly, since the legal time-limits have generally been exceeded. As a result, the majority of those currently in detention have not yet been tried or sentenced by the courts. Some do not even know why they are being held. As of the beginning of September 1995, 1,504 out of a total of 1,703 detainees were still awaiting trial, while sentences had been handed down in only 199 cases. Of the 112 female detainees, 107 were still awaiting trial and only 5 had been sentenced. The detention conditions remain extremely poor and the excessively long detention periods recently prompted some detainees to instigate prison riots.

G. Access to justice and procedural guarantees

28. Despite the difficulties involved, efforts have been made to prosecute and bring to trial those responsible for human rights violations in the past, including political killings. Most of the military and paramilitary leaders left Haiti before or after President Aristide returned. However, the amnesty granted by the Haitian Parliament in October 1994 is not a general amnesty, since it covers only acts against the State and not violations of the human rights of civilians.

29. President Aristide has set up a number of complaints offices to provide legal assistance to citizens wishing to file legal complaints. In some cases, the complaints have resulted in warrants being issued for the arrest of former members of the Haitian armed forces. Unfortunately, this has yielded very few results, either because the suspects have escaped or because the judges do not want to hear cases involving former members of the Haitian army or of paramilitary groups. None the less, former Lieutenant-Colonel Michel François, who was Chief of Police under Raoul Cedras, has been sentenced in absentia, along with 16 other people, to life in prison with hard labour for the murder of Antoine Izmery, a close associate of President Aristide, on 11 September 1993. And on 25 August 1995, Gerard Gustave, also known as Zimbabwe, received a life sentence for his part in the murder.

30. A number of judges, especially those in the north of the country, are very reluctant to try cases of past human rights violations because they are afraid of the repercussions: they fear that as soon as the multinational force leaves the country the military will start carrying out reprisals. The threat of the military coming back to settle old scores is paralysing the justice system. Some witnesses are likewise reluctant to testify in public for fear that they will subsequently be targeted by the military.

31. Preliminary investigations in criminal cases are being hampered by lack of resources: police officers are not trained in scientific investigation methods and the lack of staff and logistical resources make it impossible to carry out a satisfactory investigation by visiting the scene of the crime and gathering the necessary evidence. The capacity of the Haitian State to conduct appropriate investigations in cases involving violent death must be enhanced so as to make it easier to protect the right to life, physical integrity and security of person and prevent criminals from escaping punishment.

32. The judiciary came in for criticism following revelations in the Haitian press, confirmed by the Minister of Justice, about the release of a man called Marcel Morissaint, a suspect in the murder of Minister of Justice Guy Malary. There was a similar reaction when a justice of the peace cited "insufficient evidence" as grounds for releasing 14 suspects in a case involving a ship boarded in Bahamian waters which was found to have about 450 Haitian boat people on board. When it left Haiti, the ship had been carrying some 600 passengers. According to survivors who were repatriated to Haiti, the missing 150 passengers had been killed and thrown overboard. In fact, the justice of

the peace was later arrested, allegedly for taking money to release the 14 suspects. This tragic case demonstrates the limitations of the judicial system and the urgent need for new laws to safeguard the independence of the judiciary.

33. The release of four people detained in the course of the preliminary investigation of the murder of pro-putschist lawyer Mireille Durocher Bertin is a further example of the difficulties the judicial system encounters in seeking to shed light on complex cases. The Haitian authorities recognize this problem and have recently asked experts in France and Canada for help in handling inquiries, identifying suspects, initiating proceedings and conducting a calm preliminary investigation of cases of political murder. This is a welcome step in the effort to prevent criminals from escaping punishment.

34. The various allegations against the Central Intelligence Agency (CIA) during the three years of the military dictatorship should be viewed with some caution. According to various sources, the CIA seems to have played a double game vis-à-vis the international community and the American Administration itself, while the military junta was in power in Haiti. It reportedly had many contacts with the Haitian army and with the former chief of the paramilitary group the Front pour l'avancement et le progrès Haïtien (FRAPH) Mr. Emmanuel Constant, who is now in prison in Maryland, in the United States, for breaking the immigration laws. He has also confirmed that he had continual contacts with the CIA over that period. It will be remembered that FRAPH terrorized the population of Haiti during the three years of the military dictatorship.

35. These allegations, if true, would seriously compromise the CIA. It seems important to raise the matter in this report, since it shows the reverse of the medal and brings us face to face with facts which sometimes elude us: over and above the efforts made by the international community to restore democracy in Haiti, we are now astounded to learn that there was another anti-democratic move, allegedly headed by the CIA, to discredit President Aristide and prevent him returning to Haiti.

36. Furthermore, the American Administration has agreed to return to the present Government some 150,000 pages of documents seized at FRAPH's headquarters in October 1994. However, the United States first intends to screen these documents so as not to jeopardize the security of its nationals and to prevent any old scores being settled in Haiti as a result of the information in those documents.

1. Justice

37. The independent expert was impressed by the scope of the demonstrations by the Haitian people demanding justice. But the question arises whether a judicial system in such an advanced stage of decay can respond to the needs of a people that has always regarded the law as an instrument of oppression.

38. To all intents and purposes, the Haitian judicial system has been at the service of the rich and has been discredited by its own venality and inefficiency. The coup d'état of 30 September 1991 delivered its death blow.

If one looks at the way justice was administered, it is clear that, with a few exceptions, judges acted within the limits imposed by the dictatorship and failed in their duty to apply the law and defend people's rights, particularly where political cases were concerned. The judiciary had little or no real independence. Thus, it is hardly surprising that Haitian groups have been calling for the dismissal of many corrupt and incompetent justices of the peace and government commissioners. Yet, it must be acknowledged that many problems hamper the administration of justice in Haiti. The independent expert was able to identify them by talking to members of the judiciary, government bodies, non-governmental organizations, MICIVIH and Haitian civilians and by examining the relevant laws and regulations.

39. His findings confirm the conclusions reached by William G. O'Neill, the United States legal expert and consultant to the National Coalition for Haitian Refugees (NCHR), in his report entitled No Greater Priority: Judicial Reform in Haiti. He says that the Haitian judicial system is deficient in all respects: it lacks resources, competent staff, independence, initiative and integrity. The services it offers are a disgrace, with courts being barely distinguishable from the small shops and houses in Haitian towns and villages. Judges and government commissioners ("procureurs") are badly trained, are often chosen on the basis of their connections or willingness to yield to the demands of their patrons, and dispense "justice" to the highest bidder or the person with the most power. MICIVIH reached the same conclusions in its study of the Haitian judicial system which contained recommendations for improving the administration of justice in Haiti. The Minister of Justice, Mr. Jean Joseph Exumé, summed up the situation as follows: "The Haitian judicial system is an anachronism. The judicial structure must be patiently rebuilt. The judicial system has to work and decisions must be rendered within reasonable time-limits."

40. It is in this context that the Haitian Government, with the support of the international community, is currently engaged in a far-reaching programme of reform of the judicial system. The programme has nine components, concerning respectively the judiciary, prisons, the police, the updating of legal texts and codes, the courts, officers of the court, legal documentation, helping citizens gain access to justice, and civil registry.

41. Among the practical steps that have been taken, the independent expert noted in particular the judicial training programme, the first phase of which was held from 17 January to 29 April 1995. The second phase began on 3 July 1995 with the opening of the Ecole de la Magistrature, which will train judges and government commissioners. Regrettably, the curriculum does not currently include human rights courses, but assurances have been given that such courses will be introduced in the near future and will also become part of police officer training. Many judges, and in particular many justices of the peace, have never been to law school and earn a pittance, so the Government recently raised their salaries to provide an additional incentive.

42. The independent expert learned a lot about the court equipment problem when he visited the government commissioner in Port-au-Prince. The typewriters dated from the 1950s, there were no photocopying facilities, telephones had been disconnected for months, exercise books were being used for record-keeping, and so on. Magistrates' courts usually have no

electricity and lack even the basic texts (civil code, penal code and code of criminal investigation). Fortunately, the Haitian Government is determined to remedy these shortcomings and has begun setting up basic libraries, giving priority to the magistrates' courts.

43. In any event, it is vital that legal texts and codes be updated as quickly as possible. President Aristide signed a decree on 22 August 1995 on the organization of the judicial system. The decree amends the Act of 18 September 1985 with a view to adapting it to the requirements of the current judicial reform process. The main purpose does not seem to have been achieved, but at least the decree enables the judicial system to function more effectively, by, for example, facilitating access to the system and easing the pressure on courts of first instance. It is to be hoped that the new Parliament will give high priority to judicial reform, including the adoption of judiciary regulations incorporating the Basic Principles on the Independence of the Judiciary, as drawn up in 1985. 2/

2. Prisons

44. The Haitian prison system deteriorated during the Duvalier dictatorship. Despite some minor improvements since then, conditions in Haiti's prisons remain well below the level required by the Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955. 3/ Over 85 per cent of detainees are still waiting for their cases to be heard. Some have not made a single appearance before a judge since they were taken into custody: in certain cases prisoners have been held for over a year without knowing what they are charged with. Until recently, it was virtually impossible to obtain an accurate list of those detained in the national penitentiary in Port-au-Prince. Prisoners were not fed properly and received no medical care. Some were tortured by their jailers. As there was no detention centre for women, female prisoners were sometimes subjected to sexual abuse. Minors suffered greatly as a result of being crowded in together with adults, in contravention of the Penal Code, which stipulates that children under 16 years of age must be confined in a rehabilitation centre.

45. The inhumane and cruel conditions in Haiti's prisons reflect the conditions faced by the population at large, which has suffered greatly in the absence of democracy and of the rule of law. The Ministry of Justice is currently working to make the prisons more humane. These efforts have been supported by the international community, with UNDP taking the lead by launching a penal reform assistance project in March 1995. A French expert has drawn up a plan of action for prison reform over the short, medium and long term. A national penitentiary administration has already been set up and prison officers have been recruited and trained. Infrastructure remains the biggest obstacle. Although much progress has been made at the Gonaïves prison, the same cannot, unfortunately, be said for the Saint-Marc prison, where conditions are extremely primitive. The national penitentiary in Port-au-Prince has a computerized system which allows better processing of prisoners' cases. Work is under way there to set up an infirmary and provide cells more humane than those existing at present, where 400 prisoners sleep on the floor. Women and minors have been transferred to the Fort National, where conditions are better. Prisons in the interior of the country are still mixed, entailing the risk of sexual abuse and violence.

46. It is encouraging that efforts have been made to recruit female staff for all prisons. Minors being held at the Fort National are mostly orphans or street children and have recently received training in cutting out material for men's clothing and electrical work. Literacy courses are also planned for those who do not know how to read or write.

H. The National Commission of Truth and Justice

47. The preamble of the presidential decree of 28 March 1995 setting up the National Commission of Truth and Justice (CNVJ) constitutes a veritable key to understanding the commitment, reaffirmed by President Aristide on the occasion of the commemoration of 30 September 1991, to put an end to the culture of impunity and to respect the Haitian people's desire to make Haiti a State governed by the rule of law. Indeed, only complete and public revelation of the truth will make it possible to satisfy the basic requirements of the principles of justice and create the conditions essential to a genuine and effective process of transition and national reconciliation.

48. The Commission has seven members, including three chosen in close cooperation with the United Nations and the Organization of American States (OAS). In accordance with article 21 of the presidential decree of 28 March 1995, the Commission's mandate was extended by three months to 31 December 1995. A further extension was granted to draft the final report, to the President, who will make it public, by the end of January 1996 at the latest. It will then be for the President and the Government to adopt the recommendations formulated by the Commission and to carry out all the measures necessary for their implementation.

49. The Haitian authorities' commitment to ensuring that the Commission is able to function independently and impartially and to discharge its mandate

> "to establish the whole truth with regard to the most serious human rights violations committed between 29 September 1991 and 15 October 1994 within and outside the country and to promote the reconciliation of all Haitians without prejudice to the judicial proceedings which might result from such violations"

is reflected by the scale of the financial contribution those authorities made to the Commission, which amounts to 13 million gourdes [US$ 1 = 19.4 gourdes]. It should be noted that this sum is more than double the 5-million-gourde contribution announced previously. The Commission has thus been able to carry out its work since May 1995 as a result of funding from the Haitian Treasury, as well as a grant of 1 million gourdes from the Canadian Embassy in Haiti. The Commission had previously faced grave difficulties due to the lack of adequate financial, human and administrative resources. Since then, qualified staff and international consultants have got down to work and are receiving technical assistance from MICIVIH.

50. Within the investigative unit, special attention has been given to the cases of women victims of politically motivated sexual abuse. As to data collection, the Commission has received information from MICIVIH, Amnesty International, Action by Christians for the Abolition of Torture (ACAT), the Centre oecuménique des droits de l'homme and other organizations. Some of the

information, including data gathered by the Plate-forme des organisations haïtiennes des droits de l'homme and NCHR is now in the database. To increase public awareness of its work, the Commission has produced several radio programmes. It also organized a training session for investigators and assistant investigators who were subsequently deployed throughout the country to enable the population to lodge complaints. In the Departments of the West and the Artibonite, complaints were still being gathered because of the impressive number of individuals wishing to give statements. It should be recalled that these two departments were particularly affected during the period of the coup d'état. According to Mrs. Françoise Boucard, President of the Commission, the initial target of 5,000 statements will certainly be reached and will probably be exceeded. During our stay, the Commission had already begun in-depth investigations and analysis of the information received. Obviously, the Commission will not investigate in detail those persons already being prosecuted, but it considers it to be its duty to mention them in its report.

51. In addition, it has commissioned the services of a legal anthropology team set up with the help of the human rights section of the American Association for the Advancement of Science. MICIVIH has provided valuable assistance in connection with the identification of sites where victims of human rights violations may have been buried and also facilitated the mission of the legal anthropology team. The team's discoveries and analyses will without doubt shed light on the repression techniques used during the period of the coup d'état and on the identity of the victims.

52. Since many victims of the repression had to leave the country, the Commission has asked NCHR to coordinate information-gathering in the United States. The Lawyers' Committee for Human Rights has also offered its support. The President of the Commission has stated that similar contacts have been established in other countries which received Haitian refugees during the period of the coup d'état. Thus, in September 1995 in Montreal, for example, information-gathering was organized under the auspices of the International Centre for Human Rights and Democratic Development and the Table de concertation pour les réfugiés.

53. Since September, the Commission has received many contributions, notably from the Governments of Canada, Switzerland, the European Union, United Nations Voluntary Funds, as well as private charitable organizations. These contributions, together with a pledge by the United Nations Centre for Human Rights to take over the costs of an international commissioner, have been a great help in covering the Commission's overheads. Nevertheless, this financial share, paid in late, has led to difficulties in carrying out the Commission's activities.

54. The work is important not only for Haiti but also for the whole international community since it could have a positive influence in other countries and help to prevent atrocities like those the Haitian people have experienced. It must also be borne in mind that the Commission's recommendations will be taken into consideration and will help the judicial system to complete its work.

I. Women

55. During the period of the coup d'état, Haitian women were targeted by military personnel and suffered greatly as a result of political violence. The Government is taking measures to try to rehabilitate women victims, through projects aimed at psycho-social reintegration, legal reform and the drafting of a text on political violence.

56. Although there have been no politically motivated acts of violence against women since the return of President Aristide, it must be pointed out, on the other hand, that domestic violence remains a cause for concern.

57. The inter-agency Women and Development Committee of the United Nations system in Haiti reports that, during the survey on AIDS in Haiti, 29 per cent of female respondents stated that their first sexual intercourse had been non-consensual. In the course of the same survey, a partial list was compiled of Creole expressions used by certain men to refer to sexual intercourse and several of these clearly hint at relations characterized by violence and brutality. This is a very painful part of the reality of life for Haitian women. The expert's recommendation that the Government should invite the Special Rapporteur of the Commission on Human Rights on violence against women to visit Haiti has been favourably received. The representative of the United Nations Population Fund has even offered assistance in connection with the Special Rapporteur's travel and stay.

J. Children

58. Early in 1995 Haiti ratified the Convention on the Rights of the Child. At the start of the new school year, President Aristide made a gift of school supplies to the children of Haiti, whose education was in most cases adversely affected by the consequences of the military regime. It must be recalled that there is almost no public primary education, so that parents are forced to enrol their children in private schools. However, the coup d'état, the embargo and the economic and social situation left parents unable to cover school fees. This situation convinced UNICEF to pay for the schooling of more than 40,000 children.

59. UNICEF currently has a plan of action for Haiti containing several equally important components which the Government of Haiti would like to see applied as quickly as possible. In order to improve child welfare, the relevant Haitian legislation must be revised to reflect international standards. In this regard, the independent expert recommends the drafting and adoption of a children's legal code, the creation of children's courts, the inclusion of the basic principles of the rights of the child in school curricula, and the establishment of a national institution for the rights of the child consisting of representatives of the Government and of the public.

60. One major source of concern in Haiti is children who work as servants. A survey carried out in 1993 by the Institut psycho-social de la famille (IPSOFA) found that these child servants live in distressing conditions. Domestic work, ("restavèk" in Creole), means children whom their natural parents, often from rural areas, place with more affluent families who generally live in the towns, to relieve the burden of the cost of looking

after them and guarantee them a better life. This practice is so deep-rooted in Haitian customs and culture that a law has been adopted on it. Under the legislation in force, a child, in exchange for taking part (on an unpaid basis) in a family's household work, receives his board and lodging, an education and care. However, the so-called host family, whose original role was to look after the child and give him a good education, will exploit the child and use him for all the menial domestic work. He or she will become a "slave" of the house, because he is not a household "employee" and will often have to do all the family's work in conditions that are often distressing and humiliating: fetching drinking water, cleaning the house, doing the shopping, preparing the meals, looking after the members of the family, particularly the children. In exchange for hard work, the child receives neither care nor an education nor any affection. The child is merely ill-treated, belittled, with no respect for his dignity or innocence. The child is only entitled to eat the leftovers and usually sleeps on the floor. It has been shown now that the physical, moral and emotional suffering of the children is ignored. There appear to be at least 200,000 child servants living at the bottom half of the socio-economic ladder.

61. Both boys and girls are exposed to a form of serfdom and work without pay in inhuman conditions. Although this practice can be explained by the abject poverty of the parents who place their children in homes as servants, the necessary legislative and regulatory steps should be taken as an urgent step to attack this evil and to alleviate its effects until such time as the practice is abolished for ever. Haitian society preserves this situation and fully recognizes its existence. However, it should fight to protect children and gradually eliminate this long-standing custom, which is tied in with economic, social and cultural considerations and is unquestionably harmful. All levels of society, both rich and poor, must be educated and informed in order to make them aware of the problem.

K. Elections

62. The local, municipal and legislative elections of 25 June 1995 were marked by many irregularities which, in the opinion of the OAS Electoral Observer Mission, did not affect the credibility, transparency or validity of the vote. Although many diplomats posted to Haiti agree with the OAS Observer Mission, the great majority of the political parties do not. According to Mr. Turneb Delpé, spokesman for the Front national pour le changement et la démocratie (FNCD), the elections could not be free and democratic since the Provisional Electoral Council was composed mostly of members who were close supporters of President Aristide or of the parties making up the presidential coalition, and the elections were marred by massive fraud.

63. These allegations of fraud were not supported by evidence, although the organization of the elections certainly left a great deal to be desired because some members of the Provisional Electoral Council proved to be incompetent when it came to managing an election. Apparently that was why the President of the Council was replaced. Another important point was the high turn-out rate of voters in the first round, which involved 25 political parties and some 10,000 candidates. On the other hand, the second round of the legislative elections, on 17 September 1995, although held without

violence, had a turn-out of only 30 per cent according to the Council, and 5 per cent according to the opposition parties which boycotted the election. Referring to these figures, the Secretary-General of the Council observed that: participation in the second round of the 1995 legislative elections had been much higher than in 1990. Observers of Haitian society explain this low turn-out by the lack of civic information and education in voting techniques. They feel that Haitians are not used to a two-round election, and thus many thought that the voting had ended on 25 June. We agree with this analysis, which recalls similar situations in some African countries.

64. The presidential elections of 17 December 1995 went off smoothly. This is because the voting had been carefully prepared. The Provisional Electoral Council (CEP) distributed electoral material in time and recruited thousands of people to form the electoral monitoring unit, as it was their task to ensure that the elections were held properly. Those who feared at one time that criminal attacks might be made during the last days of the campaign have been reassured. However, the well-organized elections and the climate of safety did not bring out the population to vote. This is due in part to the fact that, during the electoral campaign, President Aristide adopted an ambiguous attitude towards René Préval, the candidate of the Lavalas Presidential Party. He proved to be more than reticent during the electoral campaign and only at a very late stage did he support René Préval. Nor did he urge the population to follow his choice or encourage a large turnout. This behaviour did a great deal to discourage the electorate at large. Nevertheless, René Préval clearly came out ahead, for with a very low 28 per cent turnout, he was elected with almost 88 per cent of the votes.

65. It is not the fear of violence that deterred people from voting, but the lack of enthusiasm and motivation aroused by the general election. Some people consider that the very low turn-out represents a sort of protest against the departure of President Aristide. His followers would certainly have wanted his term extended by three years. It is plain that, at the present time, President Aristide enjoys extraordinary popularity in his country: he represents a man who has brought hope back to the people of Haiti and started to restore democracy and the rule of law after the humiliations and the human rights violations committed during the three years of dictatorship. Accordingly, the desire of Haitians to see President Aristide in office for three more years is understandable. The independent expert none the less takes the view that, despite the man's worth and despite the de facto, but not the de jure circumstances that warranted an extended term of office, President Aristide made the right choice in deciding not to delay his departure and to abide by the letter of the provisions of the Constitution.

66. Although the international community considers that the people voted calmly and quietly, Mr. Léon Jeune, the independent candidate for president, has publicly contested the results, claiming irregularities in the organization of the ballot and demanding that it be declared null and void.

67. The presidential election in December 1995 will, for the first time in Haiti's history, permit a transfer of power between two democratically elected presidents. René Préval is close to President Aristide and regards himself as

his spiritual and political heir. The transfer of power on 7 February 1996 therefore reflects a continuation of the efforts to rebuild Haitian society that have already been made by the Government in office.

L. Economic, social and cultural rights

68. The World Conference on Human Rights, held in Vienna in 1993, solemnly reaffirmed that civil, political, economic, social and cultural rights are indivisible, interdependent and universal. Effective realization of economic, social and cultural rights is of vital importance for the well-being of peoples. However, these rights are not at the present time specifically applied in Haiti, and this considerably undermines the exercise of all human rights and fundamental freedoms, as well as the country's economic and social development. Recognition of economic, social and cultural rights in this country takes on special importance in that the population is learning again to live in a serious economic and social crisis. Social inequalities and abject poverty are sapping the foundations of Haitian society.

69. Haiti is the poorest country in the Americas and one of the poorest in the world. Living conditions are deplorable. The de facto regime has destroyed the country: basic infrastructures have deteriorated; unemployment is high; internal displacement of the population and refugees have aggravated problems of poverty and economic difficulties. Access to water and electricity is not guaranteed for all of the population: drinking water is scarce and, very often, women and children in rural areas must walk several hours to obtain it; Electricité d'Haiti (EDH) is not satisfactory as a public service and power outages are frequent.

70. Conditions of hygiene are execrable. As far as health is concerned, equipment and medicines are in short supply and the sector is still largely in private hands. Women and children are the first to suffer from malnutrition. Mortality rates among children and mothers are very high, that for mothers being one of the highest in the world.

71. Education is one of the sectors that has been most seriously affected in the hemisphere. Haiti has the lowest school attendance and literacy rates in the Americas. Girls are under-represented in school. Education is in the hands of the private sector, which does not make for the spread of education to the poorest groups. Education in private schools is not subject to regulations; the teachers are often unqualified, and the classes are overcrowded and have poor facilities. Families that want an education for their children must bear the cost of enrolment, school books (or university texts), and pupils' uniforms. In such circumstances, it is clear that schools are beyond the means of the majority of Haitian families.

72. Furthermore, privatization projects highlight the difficulties involved in executing them. The negotiation of a structural adjustment programme with IMF and the substantial financial aid promised by the United States administration are contingent upon such privatization. The effect of this situation is to place considerable constraints on possible action by the Government, which is dependent on aid that is blocked until controversial

privatization projects are carried out. Moreover, the uncertainty produced by the privatization issue led to devaluation of the gourde, the national currency, in November 1995, and as a result made already galloping inflation even worse. An urgent economic recovery programme was adopted in January 1995 with a view to concerted action in the humanitarian assistance and development sectors. This programme is financed largely by international donors.

73. In the present situation, the Haitian Government is incapable of guaranteeing the slightest enjoyment of economic, social and cultural rights. For this reason René Preval intends, when he takes office, to accord priority to the struggle against abject poverty and to the task of reducing the gap between social classes. Indeed, a country's economic and social development goes hand in hand with the implementation of democratic and judicial reforms. The new President intends to bring in a Government that is lawful, reliable and honest and acts openly, for corruption in State institutions is one of the major obstacles to a society's social and economic advancement. And, as far as the privatizations are concerned, his intention is to take a pragmatic look at the question of public enterprises and to act in accordance with the interest of the Haitian people.

74. Haiti must improve its ability to act, in both the social and economic spheres, if it is to avoid sinking still further than it has. It is a difficult challenge, but one that should be taken up by a country which has already suffered a great deal and which knows only too well the cost of freedom.

II. CONCLUSIONS

75. The situation of human rights in haiti has improved considerably since President Aristide returned in October 1994. However, the common crime rate has skyrocketed, although the situation has improved somewhat over the past few months thanks to the presence of UNMIH.

76. A number of murders labelled as common crimes - despite the fact that they did not fit this description - were committed during this period; in reality it would appear that they were committed for political reasons. Moreover, the fact that the Haitian police lack both the technical knowledge and equipment is hampering the effective investigation of most of these killings.

77. Pre-trial detention is the rule rather than the exception, contributing to overcrowding in the prisons, where 85 per cent of the inmates are awaiting trial. There is a real desire to prosecute those responsible for violating human rights but it tends to be thwarted by the inefficiency of the judicial system and the fact that some judges are afraid to prosecute former members of the military.

78. The Haitian judicial system is out of date and needs in-depth reform. However, steps have been taken as a matter of urgency to ensure a minimum level of efficiency both in the courts and in the prisons.

79. The National Commission of Truth and Justice has already achieved remarkable results in spite of the difficult conditions in which it had to work. The report to be submitted to the President before the end of January should be carefully followed up by the Government.

80. Laudable efforts are under way to rehabilitate Haitian women who, although no longer victims of political violence, still suffer from domestic violence.

81. The elections of 25 June 1995 were marked by many irregularities which do not, for all that, place their credibility in doubt. Nevertheless, efforts were made to ensure that the presidential elections were open and above board. It has to be acknowledged that the presidential elections of 17 December 1995 were held without disturbances, unlike the general elections in June. On voting day, no incident was recorded other than a clash south of Port-au-Prince in which several shots were fired at a MINUHA vehicle, but there were no victims. The independent expert's recommendations to the General Assembly of the United Nations in November 1995 and the effective work done by the Interim Electoral Council set up for that purpose certainly made a large contribution to proper organization of the voting, which was done calmly and openly.

82. The situation in Haiti is fraught with danger because of deplorable economic and social conditions. The support of the international community and greater understanding on the part of the Bretton Woods institutions would help to defuse the situation.

III. RECOMMENDATIONS

83. The independent expert recommends:

(a) That political killings, include that of Mrs. Mireille Durocher Bertin, should be thoroughly investigated with the cooperation of French and Canadian experts and that those responsible should be prosecuted and brought to trial. If they have fled, international arrest warrants should be issued and Haiti should request their extradition so that they can be tried before an impartial, independent Haitian court;

(b) That measures should be taken as a matter of urgency to reduce overcrowding in the prisons. Judges from countries following the French legal tradition could be sent to Haiti to work with Haitian judges to help them conduct the triage of cases and issue verdicts on the least serious offences whose perpetrators are being held pending trial;

(c) That the recommendations of the National Commission of Truth and Justice should be implemented by the Haitian Government with the support of the international community;

(d) That the Commission's Special Rapporteur on violence against women should accept the invitation of the Haitian Government, with the support of the United Nations Population Fund, to visit Haiti;

(e) That support for the ongoing process of judicial reform should be given priority within the framework of bilateral and multilateral assistance;

(f) That the aptitude and independence of the government commissioners appointed by the illegal governments should be evaluated and the requisite measures should be taken, including possible dismissal, and in conformity with the applicable rules.

(g) That retraining sessions for judges and government commissioners should be organized, calling upon experienced Haitian judges and lawyers and upon lawyers and judges from countries following the French legal tradition; if possible, they should speak Creole;

(h) That instruction in international human rights law should be added to the curricula of the Ecole de la Magistrature and the Police Academy;

(i) That a programme of rural legal services should be developed in cooperation with Haitian human rights organizations in order to train paralegals;

(j) That the Code of Criminal Investigation should be revised without delay with a view to speeding up proceedings while guaranteeing respect for human rights, particularly the right to a defence;

(k) That the Basic Principles on the Independence of the Judiciary should be incorporated in the future judiciary regulations. Similarly, the law concerning the legal profession should take into account the Basic Principles on the Role of Lawyers adopted in 1990 4/;

(l) That an institution of the ombudsman type and a national committee on the rights of the child, in which civilian society would be represented, should be established;

(m) The employment of children as servants is a major concern and efforts must be made to bring approximately 200,000 children out of the distressing conditions in which they are living;

(n) The brigades de vigilance should be suitably trained to prevent their members from meting out summary justice, and they should be done away with as and when the Haitian national police is in a position to perform its duties fully and effectively;

(o) That the UNMIH civil police should remain in Haiti with a maximum of 300 police officers for a minimum period of five years. It will assist in the on-site training of members of the Haitian National Police in police techniques, fact-finding, administration and other subjects. It must be remembered that the Haitian National Police is a young police force which, as yet, lacks experience and credibility;

(p) That the mandate of the International Civilian Mission in Haiti (MICIVIH) should be extended. Even if its staff must be reduced by one third, its presence in Haiti will help to strengthen the technical capacity of

governmental and non-governmental Haitian entities in the area of human rights. MICIVIH will also continue to assist the Haitian authorities in identifying gaps and flaws in the judicial system and to participate in the continued training of government commissioners and other magistrates. It could take in hand the programme for human rights instruction at both the Ecole de la Magistrature and the Police Academy;

(q) The technical cooperation programme with the Haitian Government prepared by the Centre for Human Rights to strengthen the ability of State bodies to act in the field of human rights should be supported. This programme should lay emphasis on advisory services in legislative reform, the training of persons employed in the administration of justice, and human rights education to assist young people and vulnerable groups;

(r) To enable the people of Haiti to find their bearings and to understand and accept reconciliation, the United States should help to shed light on past events by returning the documents seized from FRAPH's headquarters, revealing clearly where the responsibility lies in each case, and indicating the truth and the lies in the allegations concerning the CIA's implication in those events. Today, the United States, because it played a major part in the process of Haiti's return to democracy, should be frank towards the people of Haiti, which is seeking to recover its dignity and to understand what actually happened and so give its own pardons. The rumours of the CIA's murky role simply fuel ill-contained anger and do not foster reconciliation among Haitians. The search for truth, indeed, has a reassuring effect and constitutes the first step towards forgiveness;

(s) That the technical assistance activities of MICIVIH and the Centre for Human Rights should be coordinated so that the Centre can efficiently take over after the final departure of MICIVIH;

(t) That a MICIVIH military presence should be maintained after 29 February 1996 as a deterrent. Many fear a resurgence of political violence after a mass departure of the soldiers deployed under United Nations auspices. Certain forces opposed to democracy and human rights seem to have gone underground, armed, and may one day emerge from the shadows to engage in subversive activities;

(u) That greater support should be provided to the programmes for reintegration into civilian life which the International Organization for Migration has set up for former soldiers who have not been incorporated into the new police force.

Notes

1/ See Official records of the General Assembly, Fiftieth session, Supplement No. 40 (A/50/40, paras. 224-241).

2/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex. These principles, adopted by the Seventh Congress, were confirmed by the General Assembly of the United Nations in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. The text of the Basic Principles also appears in Human Rights. A Compilation of International Instruments, Vol. I (First Part), Universal Instruments (United Nations publication, Sales No. E.94.XIV.1), pp. 386-389.

3/ First United Nations Congress on the Prevention of Crime and Treatment of Offenders: Report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.A. The Standard Minimum Rules, adopted by the First Congress, were approved by the Economic and Social Council in resolutions 663 C (XXIV) of 31 July 1957 and resolution 2076 (LXII) of 13 May 1977. The text of the Body of Rules also appears in Human Rights. A compilation ... (Supra, Note 2).

4/ Eighth United Nations Congress on the Prevention of Crimes and Treatment of Offenders, Havana, 27 August-7 September 1990: Report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex. The text of the Basic Principles also appears in Human Rights. A compilation ... (Supra, Note 2), pp. 324-329.